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OFFICE OF PETITIONS

In re Patent No. 6,797,111
Hongoh et al.
Issue Date: September 28, 2004
Application No. 10/000,312
Filed: December 4, 2001
Attorney Docket No. 08372.0005

:
: DECISION ON REQUEST FOR
: RECONSIDERATION OF
: PATENT TERM ADJUSTMENT
: and
: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION
:

This is a decision on the "APPLICATION FOR REINSTATEMENT OF PATENT TERM ADJUSTMENT- POST GRANT," filed October 19, 2004. Patentees request that the patent term adjustment indicated in the patent be corrected from one hundred sixty-eight (168) to two hundred thirty-six (236) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a Certificate of Correction showing a Patent Term Adjustment of two hundred thirty-six **(236)** days.

On September 28, 2004, the above-identified application matured into U.S. Patent No. 6,797,111. The instant request for reconsideration filed October 19, 2004 was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 168 days. Citing the OG Notice of June 26, 2001 (1247 OG 111), Patentees state that the initial determination of patent term adjustment of 236 days should not have been reduced by 68 days for the submission of a "Miscellaneous Incoming Paper" after the Notice of Allowance, as the paper was a Comments on Statement of Reasons for Allowance. Patentees state that the patent is not subject to a terminal disclaimer.

Patentees' argument is well-taken. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing after the mailing of a Notice of Allowance of a response to the examiner's reasons for allowance will not be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will not result in reduction of a patent term adjustment pursuant to 37 CFR 1.704(c)(10) *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance*, 1247 OG 111 (June 26, 2001). A review of the application record confirms that the reduction of 68 days was based on the filing after allowance of a "Comments on Statement of Reasons for Allowance" filed July 23, 2004. (It is specifically noted that no formal drawings were required with the Notice of Allowability.) Thus, it is concluded that the patent term adjustment should not have been reduced by 68 days.

In view thereof, the patent term adjustment indicated in the patent should be 236 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **TWO HUNDRED THIRTY-SIX (236)** days.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.



Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction